

**SPECIAL PROVISIONS**  
**DISADVANTAGED BUSINESS ENTERPRISE**  
**AFFIRMATIVE ACTION CERTIFICATION**  
**FOR CONTRACTORS AND CONSULTANTS**

With respect to the above numbered project, I hereby certify that I am the \_\_\_\_\_  
(Title)

and duly authorized representative of \_\_\_\_\_  
(Firm)

whose address is \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City) (State) (Zip)

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the State Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

"Disadvantaged business" means a small business concern; (a) which is a least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

A qualified DBE is defined as one that is currently certified by the Rhode Island Department of Administration, under U.S. Department of Transportation certification guidelines.

The Department shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The Department also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged.

- (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

- (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese, or other Spanish culture or origin, regardless of race;
- (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aluets, or Native Hawaiians;
- (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
- (e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan and Bangladesh; and
- (f) "Women."

The Disadvantaged Business listings or other available resources may be obtained at the Rhode Island Department of Transportation, External Equal Opportunity Office, State Office Building, Providence.

The phrase "Owned and Controlled" as used in this definition means a business which is at least fifty-one (51) per centum owned by one or more Socially Economically Disadvantaged Individuals or in the case of a publicly owned business, at least fifty-one (51) per centum of the stock of which is owned by one or more Socially Economically Disadvantaged Individuals and whose management and daily business operations are controlled by one or more such individuals.

This also includes: (a) a sole proprietorship legitimately owned by an individual who is a socially economically disadvantaged individual, (b) a corporation or other entity controlled by one or more socially economically disadvantaged individuals and in which at least fifty-one (51) per centum of the voting interest and fifty-one (51) per centum of the beneficial ownership interest legitimately are held by such individuals, or (c) a partnership or joint-venture controlled by one or more socially economically disadvantaged individual and in which at least fifty-one (51) per centum of the beneficial ownership interests legitimately are held by such individuals.

"Regular Dealer" means being a regular, established supplier of bulk goods that supplies a product on a regular basis to the public, not on only an ad hoc basis in relation to this contract. The firm must either maintain an inventory or have possession of distribution equipment.

The utilization of disadvantaged business enterprises is in addition to all other equal opportunity requirements of this contract.

#### **I. EXPLANATIONS:**

- A. The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement.

The amount credited toward DBE goal will be the ACTUAL VALUE of the subcontract with the DBE.

Contractors may count expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBEs are regular dealers and assume the actual and contractual responsibility for the provision of the materials and supplies. The entire expenditure to a DBE manufacturer (supplier that produces goods from raw materials or substantially alters them before resale) may be counted. Sixty percent (60%) of expenditures to DBE suppliers that are regular dealers and not manufacturers may be counted provided that the supplier performs a commercially useful function in the supply process. All expenditures with manufacturers and suppliers must be properly documented in writing in order to count toward a DBE obligation.

- B. If at any time during the life of the contract it is determined that the Contractor is not making a satisfactory

effort to fulfill the DBE requirement, the Department may withhold payment of monthly estimates.

- C. Failure by the Contractor to meet the minimum goal established in II.A.(2) of this provision will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by the above specified percent, and subtracting the dollar value of the work actually performed by DBE contractors, unless exception was previously granted under sub-paragraph II.A.(4).
- D. Contractors and subcontractors are advised that failure to carry out the requirements shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department or such remedy as the Department appropriate.

## **II. ACTION REQUIRED BY CONTRACTOR:**

Prior to contract award and within 10 days from the receipt of bids, the contractor shall as a minimum, take the following actions to assure full opportunity to disadvantaged business enterprises:

- A. Develop and submit for approval the Disadvantaged Business Enterprise (DBE) Program which will include as a minimum:
  - (1) Appointment of a representative to administer the Contractor's Disadvantaged Business Enterprise Program.
  - (2) Action to meet the established goal of not less than \_\_\_\_\_ percent of the contract bid price to the contractors, subcontractors, and/or suppliers which qualify as Disadvantaged Business Enterprises. A contractor may count toward its DBE goal a portion of the total dollar value of a contract with a joint-venture eligible under this certification, equal to the percentage of the ownership and controls of the DBE partners in the joint-venture.
  - (3) The contractor will be required to submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed contract agreement(s) between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE Program as stated in the Scope of Work. This DBE Program shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value. (4) In the event that the cumulative percentages submitted do not equal or exceed said goal of Section II.A.(2), the contractor's submission shall include a request for a good faith waiver of the goal for the reason that qualified disadvantaged business enterprises are demonstrated to be not available. Evidence in support of the request for a good faith waiver must accompany this request (see 49 CFR Part 23, Appendix A).

Should a good faith waiver be granted, the contractor will continue to pursue the goal established in sub-paragraph II.A.(2) above in connection with the actions involving contracting, subcontracting, and/or procuring materials and services during the life of the contract.
  - (5) Contractors are encouraged to use the services of banks owned and/or controlled by minorities. Contractors are encouraged to assist DBEs in financing and bonding in order to involve more DBEs in the work. Contractors are encouraged to offer managerial assistance to DBEs as necessary to help them in the prosecution of the work.
  - (6) The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the contractor will include:
    - (a) The number of DBE contractors, subcontractors, and suppliers; and the type of work, materials, or services being performed on or incorporated in this project.

- (b) The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
  - (c) Documentation of all correspondence, contact, telephone calls, etc., to obtain the services of DBE on this project.
  - (d) All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by the State Department of Transportation and the Federal Highway Administration.
- (7) A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

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(Signature of Contractor or Consultant)

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Date

**Special Note:** In cases where the contract is funded by FAA or FRA, substitute the term "MBE(s)" in lieu of "DBE(s)." The term, "Minority Business Enterprise" or "MBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act (15 USC 632) and its implementing regulations (13 CFR Part 121), that is owned and controlled by one or more minorities or women.